

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re:

DENNIS RAY JOHNSON, II, *et al.*,

Case No. 3:16-bk-30227

Chapter 11

Debtor.

OBJECTION TO FIRST APPLICATION OF LEWIS GLASSER PLLC, COUNSEL
FOR DEBTOR, FOR APPROVAL AND PAYMENT OF FEES

The Acting United States Trustee, John P. Fitzgerald, III, by his counsel, Debra A. Wertman, objects to the First Application Of Lewis Glasser PLLC, Counsel For Debtor, For Approval And Payment Of Fees for the following reasons:

1. From the time period February 12, 2016 through August 31, 2016, voluntary and involuntary petitions were filed for Dennis Johnson and 14 entities in which Mr. Johnson had an interest.

On November 07, 2016, the Court administratively consolidated Mr. Johnson's individual chapter 11 case with the other Johnson related bankruptcy except for *Sabbatical, Inc.*, case no. 16-30247 and *The Silo Golf Course, LLC*, case no 16-30369.

2. On November 07, 2016 the Court approved the appointment of Thomas H. Fluharty as chapter 11 trustee for all of the Johnson chapter 11 cases except for *Sabbatical*. On March 24, 2017, the Court approved the appointment of Thomas H. Fluharty as chapter 11 trustee in the *Sabbatical* case. On January 24, 2017, this Court approved the employment of Thomas H. Fluharty as co-counsel with Joe M. Supple and the firm of Supple Law Office as to represent the trustee in the Johnson related cases. The chapter 11 trustee has not moved to employ any other counsel in the cases.

3. On January 17, 2017, Mr. Johnson moved the court to substitute Lewis Glasser PLLC as his personal counsel in place of Hoyer, Hoyer & Smith. This Court granted Mr. Johnson's request to substitute counsel on March 14, 2017.
4. Lewis Glasser filed its application for compensation in the amount of \$108,667.50 in fees and \$72.20 in expenses pursuant to 11 U.S.C. § 331.
5. The United States Trustee objects to the payment of any fees or expenses to Mr. Johnson's counsel, Lewis Glasser.
6. Lewis Glasser undertook representation of Mr. Johnson. Mr. Johnson, in fact, provided Lewis Glasser with a \$20,000 retainer from an unidentified source. The chapter 11 trustee did not seek to employ Lewis Glasser in any capacity to represent the estate. In *Lamie v. United States Trustee*, 540 U.S. 526 (2004), the Court held that only counsel employed by a trustee under § 327 to pursue actions on behalf of the estate can seek and be reimbursed for fees and expenses from the estate. There are no exceptions. Any objections to Lewis Glasser's application for fees must be sustained under *Lamie*.
7. The services detailed by Lewis Glasser in its application are clearly for the benefit of Mr. Johnson and, in fact, were the source of some controversy to the estate causing the trustee to incur professional fees and expenses on behalf of the estate. There are many entries such as "Review emails", "Phone call", "Review docket". The detail of these services are insufficient and do not merit consideration at all. Many of the services described involve the district court litigation with Peoples Bank. Again, the trustee did not employ the services of Lewis Glasser to assist with the litigation and the services were not warranted.
8. Lewis Glasser has failed to provide an exception to *Lamie*. Even if Lewis Glasser could explain why its application is permissible in light of *Lamie*, the services rendered were for the benefit of Mr. Johnson alone and those costs should be borne by Mr. Johnson, not creditors of the estates.

WHEREFORE, the United States Trustee objects to the First Application Of Lewis Glasser PLLC For Debtor For Approval And Payment Of Fees.

Dated: August 30, 2018

Respectfully submitted,

John P. Fitzgerald
Acting U.S. Trustee, Region Four

By: /s/ Debra A. Wertman

Assistant U.S. Trustee
300 Virginia Street East Suite 2025
Charleston, WV 25301
304-347-3400

CERTIFICATE OF SERVICE

I certify that I served the foregoing objection of the identified parties via ECF on August 30, 2018:

Spencer D. Elliott
Lewis Glasser
Counsel for Dennis R. Johnson

Thomas H. Fluharty
Chapter 11 Trustee

Joe M. Supple
Counsel for the Chapter 11 Trustee

Kirk B. Burkley
Counsel for Peoples Bank

/s/ Debra A. Wertman